

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X
PRAXI, LLC,

Plaintiff,

vs.

CAP CANA, S.A., DEUTSCHE BANK A.G. and
DEUTSCHE BANK SECURITIES, INC.,

Defendants.
-----X

Case No. 07 Civ. 9727 (LTS)

AFFIDAVIT OF SERVICE BY FACSIMILE

STATE OF NEW YORK)
 :ss:
COUNTY OF NEW YORK)

Ryan Soots, being duly sworn deposes and says:

1. I am over the age of eighteen (18) years, am not a party to this action and reside in the state of New York.

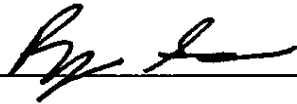
2. On the 31st day of March, 2008, at approximately 2:00 p.m., I served a true and correct copy of the attached: **LETTER TO HON. LAURA T. SWAIN**

upon: Jeffrey D. Rotenberg
Patrick J. Smith
Kenneth E. Lee
Thacher Proffitt
Two World Financial Center
New York, New York 10281
212-912-7751

and

Steve Altman
Eric Rosenberg
Altman & Company P.C.
260 Madison Avenue, 22nd Floor
New York, New York 10016
212-683-7655

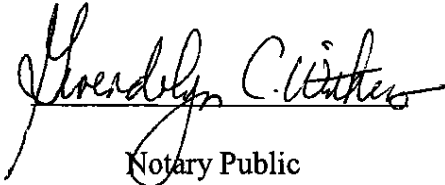
by transmitting the document via facsimile to the aforementioned numbers.



Ryan Soots

Sworn to before me this

1st day of April, 2008



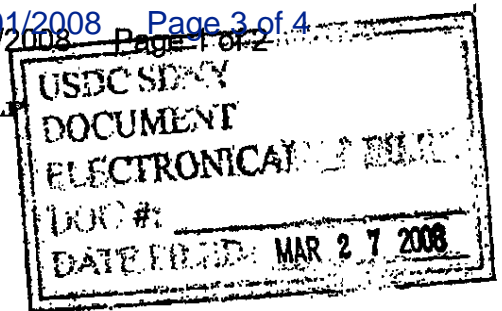
Notary Public

GWENDOLYN C. WITHERS
Notary Public, State of New York
No. 24-4822803, Qual. in Kings Co.
Commission Expires January 31, 2011

SIMPSON THACHER & BARTLETT LLP

425 LEXINGTON AVENUE
NEW YORK, N.Y. 10017-3954
(212) 455-2000

FACSIMILE (212) 455-2502



DIRECT DIAL NUMBER

E-MAIL ADDRESS

212-455-3539

jyoungwood@stblaw.com

BY HAND

March 24, 2008

Re: Praxi, LLC v. Cap Cana, S.A. et al.
07 Civ. 2797 (LTS) (THK) (S.D.N.Y.)

9727

Hon. Laura T. Swain
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

IT IS ORDERED that counsel to whom this Memo
is directed is responsible for faxing or
electronically delivering promptly a copy to all counsel
and unrepresented parties and filing a certificate of
such service within 5 days from the date hereof. Do
not fax such certification to Chambers.

Dear Judge Swain:

We represent Defendant Cap Cana, S.A. in the above-referenced action. All parties join in the first portion of this letter. Cap Cana, Defendants Deutsche Bank A.G. and Deutsche Bank Securities, Inc. join in the second portion of the letter but Plaintiff does not.

Part I (Joined By All Parties)

We write on behalf of all parties to seek a further adjournment of the date for the initial pre-trial conference and for submission of the parties' initial pre-trial statement in the case. This is the second request for an adjournment. The initial pre-trial conference is presently scheduled for April 4, 2008 at 2:45 p.m. The parties' initial pre-trial statement is therefore due March 28, 2008. Since those dates were set, the parties (with the Court's consent) have adjusted the briefing schedule associated with the motion to dismiss such that the motion is now fully briefed (reply briefs were submitted on March 20). Although the parties have conferred with respect to the items detailed in the Court's Initial Conference Order, we have been occupied with briefing the motion and therefore, regardless of how the Court rules on the issue referenced in Part II of this letter, request a modest further adjournment of both the conference date and the initial pre-trial statement. All parties report that they would be available, if convenient for the Court, for a conference on either April 15 or 16.

SIMPSON TEACHER & BARTLETT LLP

Hon. Laura T. Swain

-2-

March 24, 2008

Part II (Joined By All Defendants But Not Plaintiff)

One of the primary arguments made by the Defendants in their motions to dismiss is that this case should be dismissed in favor of the Courts of the Dominican Republic pursuant to a binding forum selection clause or, in the alternative, pursuant to the doctrine of forum non conveniens. (The motions also make 12(b)(6) arguments with respect to all of Plaintiff's claims.) We, joined by the Deutsche Bank defendants, believe that it would be in the interests the parties and the Court for any discovery conference to await resolution of the Defendants' motions. We therefore suggest that the pre-trial conference be delayed until after the Court has had a chance to consider the motions. We also request that discovery be stayed pending decision on the motions and the conference. Such relief is appropriate where one of the grounds of a motion to dismiss is a forum selection clause and/or the doctrine of forum non conveniens. *See, e.g., Wilson v. Imagesat Intern. N.V.*, No. 07 Civ. 6176, 2008 WL 126661, at *2 (S.D.N.Y. January 8, 2008) (noting that discovery on the merits would "defeat the purpose of a forum non conveniens motion") (quoting *Base Metal Trading S.A. v. Russian Aluminum*, 2002 WL 987257, at *4 (S.D.N.Y. May 14, 2002)); *see also Transunion Corp. v. Pepsico, Inc.*, 811 F.2d 127, 130 (finding it was not an abuse of discretion to stay discovery prior to ruling on a forum non conveniens motion).

We would be pleased to brief this issue in more detail or appear before the Court on April 4 or on an adjourned date to address this issue further.

We have conferred on this issue with the Plaintiff's counsel (and have shared an earlier draft of this letter with them) and understand they oppose the request made in Part II and will be shortly filing a responsive letter.

Respectfully,

Jonathan K. Youngwood
Jonathan K. Youngwood (C.R.S.)

cc: Steve Altman, Esq. (by email and first class mail)
Eric Rosenberg, Esq. (by email and first class mail)
Patrick J. Smith, Esq. (by email and first class mail)
Kenneth E. Lee, Esq. (by email and first class mail)
Jeffrey D. Rotenberg, Esq. (by email and first class mail)

*The conference is adjourned to
May 30, 2008, at 10:00 AM
and discovery is stayed pending
the conference and further
order of the Court.
SO ORDERED.*

LA TAYLOR SWAIN
LA TAYLOR SWAIN
UNITED STATES DISTRICT JUDGE